

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 Department of Transportation

SPONSOR(S): Brandes

TIED BILLS: **IDEN. /SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Johnson	Brown
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill addresses several issues related to the Department of Transportation (DOT). In summary, the bill:

- Provides a uniform civil penalty for commercial motor vehicle (CMV) drivers for failure to possess a current medical examiner's certificate as required by federal law.
- Amends or removes incorrect or unnecessary road system definitions related to 1995 changes to the process of assigning road jurisdictions
- Amends the Department of Transportation's (DOT) duties to assign roads to make them consistent with existing law.
- Authorizes the use of additional forms of security for the purpose of accomplishing removal or relocation of military monuments or memorials installed by DOT at rest areas.
- Provides that bus benches and transit shelters are to comply with all applicable laws and rules, including the Americans with Disabilities Act.
- Authorizes DOT to remove noncompliant bus bench and transit shelter installation and change the municipality or county for the cost of removal or deduct the cost from funds available to the municipality or county from DOT.
- Retitles ch. 338, F.S., from "Florida Intrastate Highway System and Toll Facilities" to "Limited Access and Toll Facilities."
- Repeals the Florida Intrastate Highway System plan, and creates Strategic Intermodal System Highway Corridors.
- Repeals the Statewide Intermodal System Advisory Council.
- Modifies state law to reflect recent changes in federal requirements for statewide transportation planning.
- Clarifies the statewide transportation planning process and simplifies the terminology used in state law.

There is an estimated negative fiscal impact of \$316,000 on General Revenue and various trust funds associated with the change in how CMV medical card violations are handled. However, the State Transportation Trust Fund should see an increase in revenues of approximately \$200,000.

Municipalities and counties will no longer receive a portion of the fines associated with CMV medical card violations, which it will no longer receive.

Municipalities and counties will also incur the cost of removing non-compliant bus benches.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill addresses several issues relating to transportation. For ease of understanding, this analysis is organized by topic.

Commercial Motor Vehicle Medical Certificates (Section 1)

Current Situation

Federal law prohibits a person from operating a commercial motor vehicle (CMV) unless, with certain exceptions, he or she is medical certified as physically qualified to drive a CMV.¹ Department of Transportation (DOT) research indicates that law enforcement officers issue uniform traffic citations for no or improper medical certificate under either s. 316.215(1), F.S., where it is a violation to drive on any highway a vehicle which is in an unsafe condition and does not contain certain equipment or failure to perform any act required under ch. 316, F.S., or under s. 316.302(1), F.S., which provides that owners and drivers of commercial motor vehicles engaging in interstate commerce are subject to certain federal rules and regulations.

If the traffic citation is written under s. 316.215(1), F.S., it is considered a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S. Under s. 318.18(2), F.S., the penalty is \$30; however, \$78 in fees are added for a total fine of \$108.^{2,3} That section provides:

(1) It is a violation of this chapter for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden, or fail to perform any act required, under this chapter.

However, if the citation is written under, s. 316.302(1), F.S., state law is not specific as to the penalty. That section provides:

(1)(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus, as such rules and regulations existed on October 1, 2009.

DOT's research indicates that courts are either dismissing the citations written under s. 316.302(1), F.S., citing the absence of a specific penalty, or imposing fines ranging anywhere from \$100 to \$500, plus additional costs. If deemed a nonmoving violation, additional costs of to \$78 are added. If deemed a moving violation, additional costs of \$98 are added.

Proposed Changes

¹ 47 CFR 391.41 and 391.43

² Florida Association of Court Clerks & Comptrollers' *Distribution Schedule of Court related Filing Fees, Service Charges, and Fines Effective July 2010*. p. 57. Available at http://www.flclerks.com/Pub_info/2010_Pub_Info/2010_Distribution_Schedule_of_Court_Related_Funds_FACC_0610FINAL.pdf (January 31, 2011).

³ This figure does not include any optional assessments.

The bill amends s. 316.3025(3)(b), F.S., to provide a specific uniform civil penalty of \$100 for violations for no or improper medical certificates by operators of commercial vehicles. There will no additional costs associated with this penalty, and the penalty will be uniform statewide. The penalties, which are now paid to the clerk of the court for distribution into various funds, will now be deposited into the State Transportation Trust Fund. Additionally, cases involving these violations will move from the court system to the Commercial Motor Vehicle Review Board. This change will reduce the fines for these violations.

Road System Definitions and References (Sections 2, 3, and 4)

Current Situation

In 1995, the state revised the system where DOT assigned road jurisdiction based on road functional classification to a system where road jurisdiction changes depend on mutual agreement between governmental entities. This was accomplished by revising ch. 335, F.S., relating to the State Highway System.

However, some provisions in ch. 334, F.S., relating to Transportation Administration relate to the functional classification and road jurisdiction process formerly in ch. 335, F.S. The bill amends ch. 334, F.S., to make it consistent with ch. 335, F.S.

Proposed Changes

The bill amends s. 334.03, F.S., to amend and delete several definitions relating to the Florida Transportation Code.

The bill amends the definitions of “city street system”, “county road system”, and “state highway system” that are in conflict with the public road jurisdiction and transfer process.⁴ The bill revises these definitions to be:

- Roads under the appropriate jurisdiction on June 10, 1995;
- Roads constructed by the city, county, or state for the appropriate jurisdiction;
- Roads subsequently transferred to that jurisdiction, but not roads transferred from the appropriate jurisdiction.

Additionally, roads completely within an area annexed by a municipality, unless otherwise provided by mutual consent are part of the city street system.

The bill redefines “functional classification” to link the usage of “functional classification” in state statute to the functional classification that is done according to procedures developed by the Federal Highway Administration,, rather than what DOT previously used for jurisdictional requirements. The only reference to this term in state statute relates to the access control classification system.⁵

The bill deletes the terms “arterial road”, “collector road”, “local road”, “urban minor arterial road”, and “urban principal arterial road.” These are obsolete definitions related to the use of functional classification for determining road jurisdiction. The bill either repeals or amends the current statutory provisions that use these terms.

The bill amends the functions and duties of DOT in s. 334.044, F.S., to remove its authority to assign jurisdictional responsibility for public roads.

The bill amends s. 334.047, F.S., to remove an obsolete provision prohibiting DOT from setting a maximum number of urban principal arterial roads within a district or county.

Monuments at Rest Areas (Section 5)

Current Situation

⁴ S. 335.0415, F.S.

⁵ S. 335.188(3)(c)(1), F.S.

In 2005, the Legislature created the “Ellwood Robinson ‘Bob’ Pipping Jr. Memorial Act” (Act). In order to create “an environment in which state residents and visitors will be reminded of the accomplishments made by military veterans in past conflicts and continuing sacrifices made by military veterans in past conflicts and the continuing sacrifices made by veterans and their families to protect the freedoms we enjoy today.”⁶ The Act authorized DOT to enter into contract, as approved by a reviewing committee, with any specified not-for-profit group or organization for the installation of monuments and memorials honoring military veterans at the state’s highway rest areas.

The Act also requires the group or organization making the proposal to be responsible for all costs of the monument and its installation and requires the group or organization to provide a 10-year bond securing the cost of removal of the monument and any modifications made to the sight as part of the placement of the monument in the event DOT determines that it is necessary to remove or relocate the monument.

Since the Act’s passage, an interested group sought to install a replica of the Iwo Jima Memorial in a DOT rest area, but was unable to obtain a 10-year bond from the bonding industry. According to DOT, it appears that the bonding industry has reservations about issuing these bonds, and no monuments have ever been installed.

Proposed Changes

The bill amends s. 337.111(4), F.S. to provide for other forms of security in addition to the 10-year bond, which could be provided by groups interested in installing and monuments and memorials at rest areas. These forms may be an annual renewable bond, an irrevocable letter of credit or form of security approved by DOT’s comptroller.⁷ The bill no longer requires the automatic renewal of the security instrument when it expires.

Bus Benches (Section 6)

Current Situation

Current law permits cities and counties to authorize the installation of bus benches and transit shelters for the comfort and convenience of the general public or at designated stops on official bus routes. That current authority includes installation within the right-of-way limits of any state road, except a limited access highway. DOT is currently authorized to direct the immediate removal or relocation of any bench or transit shelter, but only if life or property are endangered such as a roadway safety hazard.

DOT currently does not have the authority to deny installation of bus stops, bus benches, or transit shelters within the right-of-way of the State Highway System (SHS) for failure to comply with the Americans with Disability Act (ADA). However, DOT may be liable for such non-compliance and subject to legal action as a result of its jurisdiction over the SHS. In fact, DOT has been named in an ADA suit in Pinellas County due the local government permitting the installation of bus stops in inaccessible locations with non-compliant benches and shelters on state roads. DOT is now expending resources to defend a situation over which it has no authority or control.

Proposed Changes

The bill amends s. 337.408, F.S., to provide that the installation of bus stops and transit shelters on the right-of-way are to be compliant with all applicable laws and rules including, without limitation, the ADA. By July 1, 2012, municipalities and counties are required to conduct a review of all installations within their jurisdictions and relocate or remove, cause to relocate or remove, or bring into compliance any installation not in compliance with applicable laws and rules. Municipalities or counties are required to indemnify, defend, and hold harmless DOT from any suits, damages, liabilities, attorney fees, and court costs relating to the installation, removal or relocation.

⁶ Ch. 2005-43, L.O.F.

⁷ This proposed change to s. 337.111(4), F.S., is consistent s. 334.087, F.S., relating to guarantee of obligations to DOT.

The bill gives DOT the authority to direct the immediate relocation of any bus stop, bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack that either endangers life or property, or that is otherwise not in compliance with applicable laws and rules.⁸ If a municipality or county fails to comply with DOT's direction, DOT is required to remove the noncompliant installation, charge the cost of removal to the municipality or county, and may deduct or offset such cost from any other funding available to the municipality or county from DOT.

Florida Intrastate Highway System/Strategic Intermodal System (Sections 2, 7, 8, 9, 11, 12, 13, and 14)

Current Situation

Chapter 338, F.S., contains provisions for developing and updating the Florida Intrastate Highway System Plan. Chapter 339, F.S., includes provisions for developing and updating the Florida Strategic Intermodal System Plan. All but a few highway miles in the Florida Intrastate Highway System (FIHS) are also in the Strategic Intermodal System (SIS). According to DOT, this is why the 2010 SIS Strategic Plan—developed by DOT and its partners, recommended sunsetting the FIHS as a separate statewide highway network to simplify the planning process.⁹

Both limited and controlled access facilities established as components of the FIHS are designated as components within the SIS. All facility descriptions, designations, and other definitions provided within the FIHS have been included within the SIS highway component. Currently, s. 338.001, F.S., only deals with the FIHS, a portion of the SIS highway component. Chapter 339, F.S., defines the entire SIS, including the highway component.

Proposed Changes

The bill deletes the definition of “Florida Intrastate Highway System” from the definitions relating to the Florida Transportation Code in s. 334.03, F.S.

The bill retitles ch. 338, F.S., from “Florida Intrastate Highway System and Toll Facilities” to “Limited Access and Toll Facilities.” to reflect the deletion of the Florida Intrastate Highway System Plan.

The bill repeals s. 338.001, F.S., taking the FIHS plan components from Ch. 338, F.S., and moving them to Ch. 339, F.S., thereby including DOT's highway planning component with the majority of existing SIS provisions.

The bill amends s. 338.01, F.S., authorizing DOT to establish limited access facilities and to provide that the primary function of these facilities is to allow high-speed and high-volume traffic movement, and that access to abutting land is subordinate to that function and that such access must be prohibited or highly regulated.

The bill amends s. 339.63, F.S., relating to the designation of SIS facilities to add existing or planned military access facilities that are highways or military lines linking SIS corridors to the state's strategic military installations, to the types of facilities that for the SIS or the emerging SIS.

The bill amends s. 339.64(4)(d), F.S., to provide that the finance plan included in the SIS plan must include an at least 20-year cost feasible component, which is a change from the current 20-year cost feasible component.

The bill creates s. 339.65, F.S., incorporating the FIHS Plan's statutory language to the SIS portion of ch. 339, F.S., and the term “Florida Intrastate Highway System” is deleted from the statutes. The SIS provisions in ch. 339, F.S. include planning and policy language to continue necessary functions

⁸ Except for transit bus benches placed into service before April 1, 1992, DOT currently has the authority to direct the immediate relocation or removal of benches, transit shelters, waste disposal receptacles, public pay telephones, or modular news racks that endanger life or property.

⁹ A copy of DOT's 2010 SIS Strategic Plan is available at <http://www.dot.state.fl.us/planning/sis/strategicplan/2010sisplan.pdf> (January 31, 2010).

previously included in the FIHS Plan. This streamlines DOT's planning and reporting responsibilities and eliminates duplication of process. This language, which is almost identical to s. 338.001, F.S., which is repealed, provides that DOT is to plan and develop SIS highway corridors, including limited and controlled access facilities, allowing for high-speed and high-volume traffic movements. The primary function of these corridors is to provide traffic movement and access to abutting land is subordinate to this function and that access must be prohibited or highly regulated.

The new SIS highway plan requires SIS highway corridors to include facilities from the following components of the State Highway System that meet DOT adopted criteria pursuant to s. 339.63, F.S.

- Interstate highways.
- The Florida Turnpike System.
- Interregional and intercity limited access facilities.
- Existing interregional and intercity arterial highways previously upgraded or upgraded in the future to limited access or controlled access facility standards.
- New limited access facilities necessary to complete a statewide system.

DOT is required to adhere to the following policy guidelines in developing SIS highway corridors:

- Make capacity improvements to existing facilities where feasible to minimize costs and environmental impacts.
- Identify appropriate arterial highways in major transportation corridors for inclusion in a program to bring these facilities up to limited access or controlled access facility standards.
- Coordinate proposed projects with appropriate limited access projects undertaken by expressway authorities and local governmental entities.
- Maximize the use of limited access facility standards when constructing new arterial highway.
- Identify appropriate new limited access highways for inclusion as a part of the Florida Turnpike System.
- To the maximum extent feasible, ensure that proposed projects are consistent with approved local government comprehensive plans of the local jurisdiction in which such facilities are to be located with the transportation improvement program of any metropolitan planning organization in which such facilities are to be located.

DOT is required to develop and maintain a plan for the SIS highway corridor projects that are anticipated to be let to contract for construction within a time period of at least 20 years. The plan is also required to identify when the segments of the corridor will meet the standard and criteria developed below.

DOT is required to establish the standards and criteria for the functional characteristics and design for facilities proposed as part of the SIS highway corridors.

For the purposes of developing the proposed SIS highway corridors, DOT is required, beginning in fiscal year 2003-2004 and for each fiscal year thereafter, the minimum amount allocated shall be based on the fiscal year 2003-2004 allocation of \$450 million adjusted annually by the change in the Consumer Price Index for the prior fiscal year compared to the Consumer Price Index for fiscal year 2003-2004.¹⁰

The bill provides that any project to be constructed as part of the SIS highway corridor be included in DOT's adopted work program. Any SIS highway corridor projects that are added or deleted from the previous adopted work program, or any modification the SIS highway corridor projects contained in the previous adopted work program, shall be specifically identified and submitted as a separate part of the tentative work program.

¹⁰ This allocation provision was in s. 338.001, F.S., which is being repealed.

The bill does not require an annual status report of the SIS highway corridors similar to that which is currently required by the Florida Intrastate Highway System Plan.

Transportation Planning (Section 10)

Current Situation

Federal law requires states to adhere to certain requirements in its transportation planning process.¹¹ Occasionally, these requirements have changed, and from time to time the state has revised its statutes to conform to federal provisions. The federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) contained 23 planning factors to be considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. Subsequently, in 1999, Congress passed the Transportation Equity Act for the 21st Century (TEA-21) consolidated the statewide and metropolitan planning factors into seven broad areas for consideration. In 1999, the Legislature amended the statutes¹² to accommodate TEA-21, and s. 339.155, F.S. currently reflects the seven broad factors to consider in the planning process. These factors are:

1. Support the economic vitality of the United States, Florida, and the metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety and security of the transportation system for motorized and nonmotorized users;
3. Increase the accessibility and mobility options available to people and for freight;
4. Protect and enhance the environment, promote energy conservation, and improve quality of life;
5. Enhance the integration and connectivity of the transportation system, across and between modes throughout Florida, for people and freight;
6. Promote efficient system management and operation; and
7. Emphasize the preservation of the existing transportation system.¹³

However, the 2005 federal legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), separated the “safety and security” factor into two separate factors and modified the wording of other factors. However, this legislation has expired and Congress has extended the law until September 2011.

Additionally, federal law requiring each state to have a “Long-Range Transportation Plan” was amended in SAFETEA-LU to be a “Long-Range Statewide Transportation Plan.” Federal law has not required a short-range component of the long-range plan or an annual performance report, which is required under state law. In the past, DOT has issued a separate Short-Range Component of its Florida Transportation Plan¹⁴ and an annual performance report, but recently combined these reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan, but rather documents DOT’s implementation the Florida Transportation Plan. DOT and the Florida Transportation Commission¹⁵ conduct extensive performance measurement of Florida’s transportation system and DOT. DOT also submits an annual Long Range Program Plan to the Governor and Legislature that reflects state goals, agency program objectives, and service outcomes.¹⁶

Proposed Changes

The bill references that portion of federal law in which the planning factors are contained and removes the planning factors from state statutes. The planning factors referenced in federal law include:

¹¹ 23 U.S.C. s. 135

¹² Ch. 99-385, L.O.F.

¹³ S. 339.155(2), F.S.

¹⁴ A copy of DOT’s 2060 Florida Transportation Plan, which was adopted in December 2010, is available at <http://www.2060ftp.org/images/uploads/home/2060%20FTP%20Final%2001272011F.pdf> (January 31, 2011).

¹⁵ The Florida Transportation Commission provides leadership in meeting Florida’s transportation needs through policy guidance on issues of statewide importance and by maintaining oversight and public accountability for the Department of Transportation and other statutorily specified transportation authorities.

¹⁶ S, 216.013, F.S.

1. Support the economic vitality of the United States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety of the transportation system for motorized and nonmotorized users;
3. Increase the security of the transportation system for motorized and nonmotorized users;
4. Increase the accessibility and mobility of people and freight;
5. Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
6. Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
7. Promote efficient system management and operation; and
8. Emphasize the preservation of the existing transportation system.¹⁷

While the bill refers to planning factors in the current federal law, the law may be out of date once Congress passes a new transportation bill. As discussed later in the bill analysis, incorporating federal rules by reference incorporates them as of the day the bill is passed. Therefore, the statute may need to either be amended or reenacted anytime federal law regarding transportation planning changes.

The bill also deletes the short-range component of the long-range plan and the annual performance report requirement from state law, as they are not required by federal law and contains duplicative information provided in other reports.

Strategic Intermodal Transportation Advisory Council (Section 13)

Current Situation

Chapter 339, F.S., creates the Statewide Intermodal Transportation Advisory Council (SITAC) to advise and make recommendations to the Legislature and DOT on the policies, planning, and funding of intermodal transportation projects. These responsibilities include:

- Advising DOT on the policies, planning, and implementation strategies related to intermodal transportation.
- Providing advice and recommendations to the Legislature on funding for projects to move goods and people in the most efficient manner for the state.

The members of the council are appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, and represent various interests involved in the Strategic Intermodal System. The council is no longer active, and held its last meeting in December 2004 and assisted in developing the initial 2005 SIS Strategic Plan. Subsequent to January 2005, no further appointments to the SITAC have occurred; however, the members' organizations have been included in planning and updating the SIS plan.

Proposed Change

The bill repeals the SITAC.

Conforming Changes (Sections 15 through 27)

The bill amends the following statutes to revise cross-references; ss. 163.3180, 288.063, 311.07, 311.09, 316.2122, 336.01, 338.222, 338.223, 339.2819, 339.285, 341.8825, 479.01, 479.07, and 479.261.

The bill amends the following statutes to conform the incorporation of the Florida Intrastate Highway System into the Strategic Intermodal System: ss. 163.3187, 318.12, 335.02, 338.227, 338.234, 339.62, 341.053, and 403.7211, F.S.

¹⁷ 23 U.S.C. s. 135(d)(1)

Effective Date (Section 38)

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

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|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 1 | Amends s. 316.3025, F.S., relating to penalties for commercial motor vehicle violations. |
| Section 2 | Amends s. 334.03, F.S., relating to definitions used in the Florida Transportation Code. |
| Section 3 | Amends s. 334.044, F.S., relating to Department of Transportation; powers and duties. |
| Section 4 | Amends s. 334.07, F.S., relating to a prohibition of a cap of the number of miles on the State Highway System. |
| Section 5 | Amends s. 337.111, F.S., relating to contracting for monuments and memorials to military veterans at rest areas. |
| Section 6 | Amends s. 337.408, F.S., relating to the regulation of bus stops, benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of-way. |
| Section 7 | Retitles ch. 338, F.S., as "Limited Access Toll Facilities." |
| Section 8 | Repeal s. 338.001, F.S., relating to the Florida Intrastate Highway System Plan. |
| Section 9 | Amends s. 338.01, F.S., relating to the authority to establish and regulate limited access facilities. |
| Section 10 | Amends s. 339.155, F.S., relating to transportation planning. |
| Section 11 | Amends s. 339.62, F.S. relating to system components of the Strategic Intermodal System. |
| Section 12 | Amends s. 339.63, F.S., relating to system facilities designated; additions and deletions. |
| Section 13 | Amends s. 339.64, F.S., relating to the Strategic Intermodal System Plan. |
| Section 14 | Creates s. 339.65, F.S., relating to Strategic Intermodal System highway corridors. |
| Section 15 | Amends s. 163.3180, F.S., relating to concurrency. |
| Section 16 | Amends s. 163.3187, F.S., relating to amendment of adopted comprehensive plan. |
| Section 17 | Amends s. 288.063, F.S., relating to contracts for transportation projects. |
| Section 18 | Amends s. 311.07, F.S., relating to Florida seaport transportation and economic development funding. |
| Section 19 | Amends s. 311.09, F.S., relating to the Florida Seaport Transportation and Economic Development Council. |
| Section 20 | Amends s. 316.2122, F.S., relating to the operation of a low-speed vehicle or mini truck on certain roadways. |
| Section 21 | Amends s. 318.12, F.S., relating to the purpose of ch. 318, F.S. |

- Section 22 Amends s. 335.02, F.S., relating to the authority to designate transportation facilities and rights-of-way and establish lanes; procedure for redesignation and relocation; application of local regulation.
- Section 23 Amends s. 336.01, F.S., relating to the designation of county road system.
- Section 24 Amends s. 338.222, F.S., relating to Department of Transportation sole governmental entity to acquire, construct, or operate turnpike projects; exception.
- Section 25 Amends s. 338.223, F.S., relating to proposed turnpike projects.
- Section 26 Amends s. 338.227, F.S., relating to turnpike revenue projects.
- Section 27 Amends s. 338.2275, F.S., relating to turnpike projects.
- Section 28 Amends s. 338.228, F.S., relating to bonds not debts or pledges of credit of state.
- Section 29 Amends s. 338.234, F.S., relating to granting concessions or selling along the turnpike system; immunity from taxation.
- Section 30 Amends s. 339.2819, F.S., relating to the Transportation Regional Incentive Program.
- Section 31 Amends s. 339.285, F.S., relating to Enhanced Bridge Program for Sustainable Transportation.
- Section 32 Amends s. 341.053, F.S., relating to Intermodal Development Program; administration; eligible projects; limitations.
- Section 33 Amends s. 341.8825, F.S., relating to Department of Transportation sole governmental entity to acquire, construct, or operate high-speed rail projects; exceptions.
- Section 34 Amends s. 403.7211, F.S., relating to hazardous waste facilities managing hazardous wastes generated offsite; federal facilities managing hazardous waste.
- Section 35 Amends s. 479.01, F.S., relating to definitions.
- Section 36 Amends s. 479.07 relating to sign permits.
- Section 37 Amends s. 479.261, F.S., relating to the logo sign program.
- Section 38 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to DOT, in fiscal year 2009-2010, approximately 2,000 citations were issued for violations related to commercial motor vehicle operators' medical cards. While it is not known how many citations were issued pursuant to each of the two statutes, using the more expensive fine of \$158, and the new reduced fine of \$100, there is an expected loss in revenue of \$116,000.

However, the distribution of the fine is also revised; using the current provisions, the fines and associated fees are distributed to general revenue, various trust funds, and to the local clerk of court, and possibly the municipality. The total amount lost is approximately \$316,000.

The bill provides that the total fine is transferred to the State Transportation Trust Fund; therefore, there will be an approximate \$200,000 increase to that fund.

2. Expenditures:

The Commercial Motor Vehicle Review Board may see an increase in its case load related to the medical card violations being moved from the court system to the boards.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments will see a decrease in revenues associated with the change in the fines associated with the change in way CMV medical card violations are handled.

2. Expenditures:

Local governments may incur costs associated with removing non-ADA compliant bus benches or getting these benches into compliance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial Motor Vehicle drivers will see a reduction in fines associated with medical card violations.

D. FISCAL COMMENTS:

DOT may see a reduction in litigation costs associated with requiring municipalities and counties either to remove or make compliant noncompliant bus benches and transit shelters. However, the potential cost of this litigation is unknown at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires municipalities either to remove or place into compliance, bus benches and transit shelters that do not comply with the ADA. Both the number of noncompliant facilities and the cost of either removing or making the facilities compliant are unknown at this time. Therefore, it is unknown whether or not the mandates provision applies.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections of this bill make reference to the U.S. Code of Federal Regulations. While this is not inherently improper, it does raise issues for ongoing consideration. The following excerpt from an article in a recent Florida Bar Administrative Law Section newsletter provides a concise summary.

Basic Incorporation Doctrine¹⁸

¹⁸ Boyd, F. Scott, "Attack on the Clones: The APA's New Provisions on Referential Rulemaking," Florida Bar Administrative Law Section Newsletter, Vol. 32, No. 1 (September 2010). *Some citations removed.*

An incorporative reference occurs whenever legislation references material outside of itself and indicates expressly or by implication that this material should be treated as if it were fully set forth at that point in the legislation. The requirements of the referenced material are then said to be “incorporated into” the legislation that adopted them. Thus, the legal effect of an incorporative reference is to copy the requirements of the referenced material by creating a “clone” of the original material within the adopting legislation.

At heart, it’s a simple concept. Incorporation by reference is basically just a drafting technique to avoid the time and expense of setting forth all of the adopted language verbatim, and the reference should be treated as if this actually had been done. Drafters like incorporation because it can make their legislation seem much simpler and save publication costs. The resulting legislation is equally effective and the cost of publishing is reduced. Incorporation, however, can create problems....

Confusion often occurs when changes are made to the referenced material between the time the incorporation takes place and the time the adopting legislation is actually being applied. Are the changes then given effect? The courts say no.

“In the construction of such statutes the statute referred to is treated and considered as if it were incorporated into and formed part of that which makes the reference. The two statutes exist as separate, distinct, legislative enactments, each having its appointed sphere of action, and the alteration, change or repeal of the one does not operate upon or affect the other.”

This is the general rule in almost every state, but exceptions have developed to give effect to contrary legislative intent, or judicial presumptions of that intent. These exceptions have created more problems. Most notably, if referenced material is legislation of a different governmental or private body, any attempt to adopt future changes becomes an unconstitutional delegation of legislative power. The recent case of *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642 (Fla. 1st DCA 2009), *petition for cert. denied*, 26 So. 3d 582 (Fla. 2009) discusses this constitutional limitation in some detail in interpreting a state statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES